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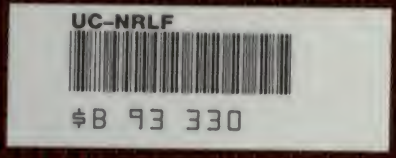

U.S. Dept. of Commerce

UNIFORM CONTRACTS AND COST ACCOUNTING DEFINITIONS AND METHODS

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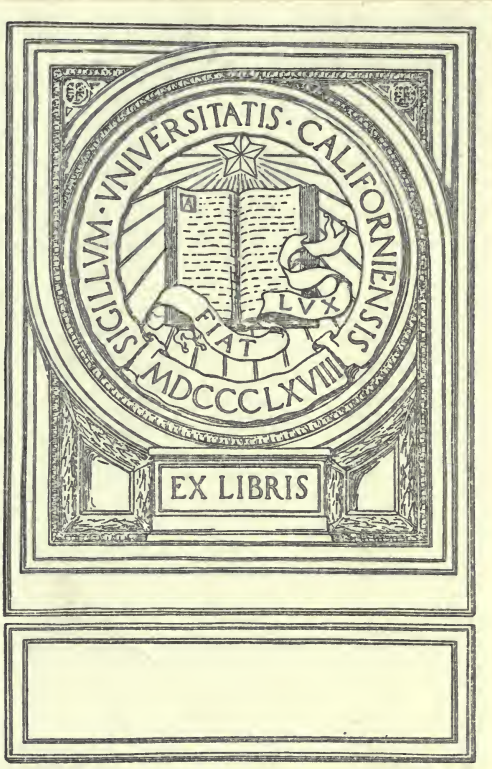
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Uniform Contracts and Cost Accounting Definitions and Methods

RECOMMENDATIONS BY
INTERDEPARTMENTAL CONFERENCE
CONSISTING OF
DELEGATES FROM THE DEPARTMENTS OF WAR, NAVY, AND COMMERCE, THE FEDERAL TRADE COMMISSION, AND THE COUNCIL OF NATIONAL DEFENSE

▽

July, 1917

WASHINGTON
GOVERNMENT PRINTING OFFICE
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REPLACING

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WASHINGTON, D. C., *July 31, 1917.*

The following recommendations on contracts and costs have been approved for submission to the departments of the Government by an interdepartmental conference composed of the following members:

DEPARTMENT OF COMMERCE.

Chairman: Mr. J. LEE NICHOLSON, Chief of Division of Cost Accounting, Bureau of Foreign and Domestic Commerce.

Mr. BURWELL S. CUTLER, Acting Chief, Bureau of Foreign and Domestic Commerce.

DEPARTMENT OF WAR.

Maj. Gen. H. G. SHARPE, Quartermaster General.
Col. I. W. LITTELL, Office of the Quartermaster General.
Lieut. Col. H. M. LORD, Office of the Quartermaster General.
Maj. WILLIAM KELLY, Office of Chief Engineer.
Lieut. Col. J. E. HOFFER, Ordnance Department, Gun Division.
Maj. L. W. BLYTH, U. S. R., Ordnance Department, Cost Accounting Section, Finance Division.
Capt. A. M. HOLCOMBE, U. S. R., Ordnance Department, Small Arms Division.
Capt. A. P. OSBORN, U. S. R., Ordnance Department, Legal Section, Finance Division.
Capt. E. A. HAMILTON, U. S. R., Ordnance Department, Purchase and Contracts Section, Gun Division.
Capt. E. A. SHEPHARD, U. S. R., Ordnance Department, Small Arms Division.
Capt. A. E. DOWNEY, U. S. R., Signal Corps.

DEPARTMENT OF THE NAVY.

Naval Constructor J. H. LINNARD, Bureau of Construction and Repair.
Pay Inspector DAVID POTTER, Compensation Board.
Paymaster G. P. AULD, Bureau of Supplies and Accounts.
Civil Engineer C. D. THURBER, Bureau of Yards and Docks.
Lieut. H. T. DYER, Bureau of Steam Engineering.
Lieut. N. W. PICKERING, Bureau of Ordnance.
Mr. C. S. ASHDOWN, Bureau of Supplies and Accounts.

FEDERAL TRADE COMMISSION.

Mr. FRANCIS WALKER.
Mr. R. W. GARDINER.
Mr. D. L. WING.

COUNCIL OF NATIONAL DEFENSE.

Mr. W. S. GEE, Aircraft Production Board.
Mr. R. L. MONTGOMERY, Aircraft Production Board.
Mr. J. H. HARRIS, Legal Committee, Aircraft Production Board.

COUNCIL OF NATIONAL DEFENSE—WAR INDUSTRIES BOARD.

Mr. J. E. STERRETT, Accountancy Committee.
Mr. A. W. TEELE, Accountancy Committee.
Mr. H. A. NILES, Accountancy Committee.

Secretary: Mr. H. P. SEIDEMANN, Institute for Government Research.

UNIFORM CONTRACTS AND COST ACCOUNTING DEFINITIONS AND METHODS.

RECOMMENDATIONS ON CONTRACTS.

These recommendations are intended to suggest to contracting officers some of the broad legal and equitable points involved in war contracts, and to express the preference of the conference for a straight purchase-and-sale contract at a fixed price, since it is simpler in terms, easier to work under, and generally speaking, productive of better and quicker results. The British Government, after several years' experience, has discarded the cost-plus contract plan and adopted the straight purchase-and-sale contract in every instance possible. It is not proposed to go into the large question of policy involved in attempting to prevent demoralization of markets by excessive competition. Suffice it to say, that the Government can furnish material and component parts under either a fixed-price or a cost-plus contract, and thus protect market conditions by purchases in bulk.

Recommendations and brief discussion follow:

I. It is recommended that, in every instance where fair terms can be obtained, contracts should be in the form of straight purchase-and-sale contracts at fixed prices.

In the determination of "fair terms" for fixed price contracts, the contractor, in so far as possible, should be required to state the cost and other factors upon which his price is based; such representations to be the subject of investigation by the contracting officer prior to the final execution of the contract, and if found to be incorrect, the price to be adjusted accordingly.

What constitutes "fair terms" can be arrived at only by consideration of many factors, such as:

(1) The quality and quantity of the articles purchased.

(2) Whether or not the plant is adaptable to business other than war business.

(3) The duration of the job and the length of time the contractor's plant and capital will be tied up. Also the amount of capital tied up in comparison with the particular output contracted for.

(4) The possibility of fluctuations in material and labor costs with attendant risk to the contractor.

(5) Loss in commercial business by taking Government work, which must be given precedence; disarrangement in plant organization and labor conditions.

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(6) Comparison with prices of other manufacturers, competitive bidding, etc.

(7) The prosperity of the trade and of the particular contractor.

In certain instances where the article is standard, ordered in bulk, deliverable promptly, a profit amounting to 10 per cent of costs is unreasonably high. In other instances where the quality of the job is high, the quantity small, or where the job ties up the contractor's plant and capital for a long period of time, or where the material and labor risk is considerable, or for other similar reasons, such 10 per cent profit may well be unreasonably low.

Again, in agreeing upon "fair terms" the following factors should be considered, any or all of which greatly aid the contractor and should tend to lower the price.

(1) United States to supply material or component parts.

(2) United States to readjust price in the event of fluctuations in price of material or component parts resulting in increased costs.

(3) United States to readjust price in the event of labor disputes resulting in increased labor costs.

(4) United States to make frequent payments to reimburse the contractor for expenditures for material, component parts, or the like.

To skimp fair terms will inevitably tend to cause contractors to lose interest in production and disturb general business conditions. Fair terms can only be determined by consideration of these general principles as well as the special factors indicated above that may apply to the particular production contracted for.

II. It is recommended that a standard form of straight purchase-and-sale contract at a fixed price be adopted for use wherever practicable. It should contain clauses which will deal with the following subjects:

(1) Method of delivery; storage of production; shipment to point designated.

(2) United States to pay for raw material when delivered to contractor.

(3) United States to have the right itself to supply material and component parts.

(4) United States to adjust price on increased material costs above estimated costs.

(5) United States to adjust price on increase in labor costs.

(6) Liquidated damages.

(7) War clause termination.

Although a straight purchase-and-sale contract for a fixed price adjusted as indicated is greatly to be preferred, nevertheless in numerous instances the United States will be obliged to obtain pro-

duction by paying for the entire cost of the same and in addition a fair profit to the contractor. Such cost-plus contract may be necessary under the following conditions:

(1) Where the production is novel and the contractor has had no past experience upon which to base a price; for example, steel helmets, large caliber guns and shells for same, aeroplane motors, and the like.

(2) Where the production involves difficult and complicated manufacturing effort subject to changing plans and specifications, or wide fluctuations in material costs; for example, steel and wooden ships, aeroplanes, optical glasswork, and the like.

(3) Where the contractor, though deserving of confidence, lacks sufficient working capital and plant equipment to carry through the job.

(4) Engineering or building jobs for which the cost-plus contract has for many years been standard.

It must be borne in mind that a cost-plus contract establishes a relation of trust between the United States and the contractor, in which the contractor is legally responsible at all times to work in the interest of the United States and receive no profit beyond that definitely specified in his contract. For all excessive costs, hidden profits in the form of depreciation, overhead, discounts, and the like, the United States may refuse to pay, or if the contractor has thereby profited may sue and recover. Practically, however, the interests of the United States and the contractor are inevitably opposed if the profit is based upon a percentage of cost. The temptation is great to the contractor to inflate his own costs, as well as the costs of subcontractors, and the task of the United States is difficult and burdensome in checking and determining proper costs.

III. It is recommended that in cost-plus contracts a fixed profit of a definite sum of money per article be agreed upon instead of a percentage of cost.

Such fixed profit can be arrived at by taking a percentage, say 10 per cent, of the estimated cost of each article or the entire job. In instances where estimates of cost are impracticable it becomes of paramount importance to choose a contractor in whose integrity the United States may have the fullest confidence. Where a fairly close estimate can be made of the cost of the article or job, upon the completion of the contract, the actual cost can be checked against the agreed estimate and the contractor permitted to share in the saving, or be charged with part of the excess of cost, depending upon the outcome. Such an arrangement stimulates the contractor to save costs and time, because the two go together. This cost-plus adjustable fixed-profit contract unquestoinably affords the Gov-

ernment the greatest protection in cost-plus contracts. Great care should be used in fixing the estimated price, which, if too high, may result in giving the contractor a profit entirely undeserved.

IV. It is recommended that in cost-plus contracts the fixed profit agreed on be subject to adjustment, so that the contractor may share in the saving of, or be charged with part of the excess of, actual cost over estimated cost.

In some instances the contractor may agree to pay for all excess over a certain named figure of cost, and the advantage to the United States in such an arrangement is too obvious for comment.

In the determination of costs, direct labor and direct material are easily ascertainable; it is the indirect charges to the job, overhead and depreciation, that present difficulties. To contract to pay a proper charge for overhead and depreciation leaves the door wide open for endless discussion, and it is suggested that wherever possible the amount of these items be tentatively fixed in advance, based on definite representations of the contractor as to the amount of fixed capital assets to be depreciated and the estimated overhead. Such amounts should always be subject to revision in case such representations prove to be incorrect. This puts it up to the contractor to make an honest representation and provides ample opportunity to check the same. It is of the utmost importance that standardized forms of contract as well as standardized methods of determining costs be applied to this class of contracts. Such standardization will produce clarity in the relation between the contractor and the United States and will fix precedents of construction for certain clauses and terms. Standardization will also afford great protection to the United States, not alone presently in determining points of difference but also in Court of Claims suits that may arise.

V. It is recommended that a standard form of cost-plus contract be adopted for use wherever practicable. As conditions necessitate changes, the form of such standard contract can be changed to suit.

SUMMARY OF RECOMMENDATIONS.[a]

I. It is recommended that in every instance where fair terms can be obtained, contracts should be in the form of straight purchase-and-sale contracts at fixed prices.

II. It is recommended that a standard form of straight purchase-and-sale contract at a fixed price be adopted for use wherever practicable containing special war clauses.

III. It is recommended that in cost-plus contracts a fixed profit of a definite sum of money per article be agreed upon instead of a percentage of cost.

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[a] Standard forms of cost-plus and fixed-price contracts will be found in the appendix.

IV. It is recommended that in cost-plus contracts the fixed profit agreed on be subject to adjustment, so that the contractors may share in the saving of, or be charged with part of the excess of, actual cost over estimated cost.

V. It is recommended that a standard form of cost-plus contract be adopted for use wherever practicable.

RECOMMENDATIONS ON COST-ACCOUNTING METHODS.

The chief purpose of these recommendations is to assist the purchasing departments of the Government, and manufacturers and contractors who are contracting on a "cost-plus profit" plan, or on a "fixed-price" plan, in which the price is to be determined after an investigation of costs.

The recommendations are intended to be of a suggestive nature, and should be used wherever the contract or rules issued in connection therewith do not give full information on costs.

It is hoped that the information contained herein may materially assist all engaged in verifying costs for the Government, and also point out to the contractors what elements to use as costs and how to summarize and present the costs to the Government inspectors.

GENERAL DEFINITION OF COSTS.

It is recommended that the following general definition of costs be included as part of the contracts, subject to such interpretation as may be outlined by the contracting or accounting officers:

Cost, as used herein, is defined as follows:

(1) Cost of material and supplies definitely ascertainable as entering into or expended in the production of the articles contracted for hereunder.

(2) Cost of all direct labor definitely ascertainable as employed in the production of the articles contracted for hereunder.

(3) A fair proportion of overhead expenses. By the term "overhead expenses" is meant the indirect labor and other manufacturing expenses, and the general and administrative expenses applicable to and necessary in connection with the production of the articles contracted for hereunder. It does not include (among other items) the following: Interest, rent, advertising, collection expenses, credit losses and customers' discounts, and such taxes as income and excess profits taxes imposed by the United States Government. [Interest, rent, and selling expenses will not be allowed as part of overhead cost, but may be the subject of special compensation when so stipulated in the contract.]

Note.—Notwithstanding the foregoing, charges may be made "direct" or as "overhead" in accordance with the usual methods of cost keeping adopted by the contractor, provided that charges are not made "direct" in Government work, when similar charges for other work done by the contractor are made as "overhead."

SPECIFIC DEFINITION OF COSTS.

It is recommended that contracting and accounting officers, manufacturers, and contractors adopt the following specific definitions of costs, subject, however, to more detailed definitions in particular cases where required.

Indirect Material.

Indirect material consists of such material as factory supplies, which, while used in the processes of manufacture, either do not enter into the product, or else enter in such a way as not to be chargeable conveniently to any particular article.

Indirect Labor.

Labor used in repairing, handling, trucking, sweeping, supervising, etc.; in short, any labor not expended directly upon the product may be included in the overhead as part of the indirect labor.

Freight, Cartage, and Express (Inward).

These items should be included and charged as part of the direct material costs. When such treatment is impracticable, they may be treated as part of the overhead costs.

Experimental Work.

When experimental work directly necessary in connection with Government contracts is not expressly provided for in the contract, it may be included as part of the overhead cost.

No portion of experimental work on other products of the contractors should be included in the overhead which is applicable to Government contracts, except relatively small residual expense which it is impracticable to distinctly allocate to any particular contract.

Defective Work.

Spoiled work, when not within the control of the contractor, and allowing for the natural and ordinary run of mistakes made by workmen and others under normal conditions, will be allowed as an element of actual cost; but defective and spoiled work resulting from carelessness, and which could have been avoided by the exercise of reasonable and usual care and diligence by the contractor or his supervising agents, shall be disallowed as an element either of direct or overhead cost.

A schedule of all important items of defective work should be prepared, stating the nature of the defect and where and how it occurred, together with its disposition and salvage value.

Taxes.

Taxes, excepting Federal taxes such as income and excess profits taxes, accruing during such time as the contract may be in process may be included as part of the overhead.

Liability Insurance.

Accrued liability insurance insofar as it covers employees working on Government contracts may be included as part of the overhead. Such accruals may cover premiums payable to insurance companies, State compensation boards, or premiums under independent insurance plans not materially exceeeding in cost those of insurance companies or State compensation boards.

Packing and Packing Supplies.

These items may include boxes, lumber, nails, containers, strapping, and miscellaneous packing supplies, and also the packing labor which is incurred, and these items may be included as part of the overhead.

Scrap and Waste.

Wherever the scrap and waste and containers on Government work have a salvage value, this value should either be deducted from the material cost or from the overhead.

Administrative Expenses.

The segregation of administrative expenses as a distinct class is sometimes a matter of convenience. In the majority of cases the time of the administrative force is spent in supervising the selling organization, in solving problems of production, and in looking after the finances of the business. Therefore administrative expense is partly a production cost, and partly a selling cost.

Only that portion of the administrative expense which is applicable to Government work may be included as a part of the overhead costs.

Salaries.

Excessive salaries or other excessive compensation shall not be allowed. In order to form a basis for passing on this matter, an amount of salary or other compensation paid for the three years prior to the war shall be considered as one of the factors in determining the amount to be allowed.

Employees' Welfare.

All of the following items are allowed as overhead expense:

(1) Wages paid employees while absent on account of sickness.

(2) Expenses of operation and maintenance of plant hospitals, also all medicine and supplies for first aid to the injured, expenditures

for hospitals and other organizations to cover definite benefits to employees.

(3) Payments according to a definite pension plan to disabled and veteran employees or their families, and not included in liability insurance or other items mentioned herein.

(4) Net results of operating the contractor's restaurants.

(5) Vacation allowances to wage earners.

(6) Expenses in connection with employees' welfare, such as group insurance, conducting club rooms, rest rooms, reading rooms, and educational classes.

Depreciation.[a]

In determining depreciation it is desirable (1) to agree on a proper rate, taking into consideration the use of the plant for purposes other than war orders, (2) to have the contractor make a representation as to his actual cash investment in plant, machinery, tools, fixtures, and the like, subject to investigation as to correctness, and to apply the rate agreed upon to the sum fixed or corrected, as the case may be.

The rate of depreciation depends upon many different and variable factors, some of the most important of which are as follows:

(*a*) Nature and construction of buildings and equipment, together with their condition.

(*b*) Deterioration of plant in general and of machinery in particular, due to wear and tear.

(*c*) Amount spent for maintenanee in the way of repairs and renewals.

(*d*) The invention of new methods or new machines which may or may not entirely replace the old ones.

(*e*) Permanency of business, and likelihood of increase or decrease in the same.

(*f*) Amounts previously written off for depreciation.

(*g*) There are many additional factors, such as amortization, peculiar and excessive uses of machines, rate of production, idleness of plant, etc., all of which enter into the problem.

Depletion.

In entering into contracts for raw materials, based on cost plus profit, consideration should be given the item of depletion. The Interdepartmental Cost Conference is not at the present time ready to make any recommendation concerning this subject.

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[a] Regulation No. 39, issued October 24, 1916, as Treasury Decision No. 2384 (internal revenue), interpreting depreciation as stated in the munitions tax law of September 8, 1916, will be found in Appendix A.

METHOD OF COLLATING COST DATA.

It is recommended that the contractor use the following methods, in so far as practicable, in presenting his final cost figures on materials, labor, and overhead.

Method for Ascertaining Material Cost.

The following information should be compiled to support the material costs:

(1) Summary showing the totals of the cost value of the various kinds of material used, and supported by original records, such as material reports and requisitions, bills of materials, specifications, and production reports.

(2) In determining the material cost, the actual prices paid should be used; where this is not practicable fair average prices may be used.

(3) In ascertaining the material cost, all discounts should be deducted from the purchase price.

(4) Duties, import expense, freight, cartage and express inward may be added to the purchase price of the material for the purpose of ascertaining the material cost, or those items may be included as forming a part of the overhead expense items as heretofore mentioned.

Method for Ascertaining Direct Labor Cost.

The following information should be compiled to support the direct labor costs:

(1) Summary showing the totals of the direct labor cost and supported by original records showing the operations, time, and amount of wages paid to the employees engaged upon Government work. These original records may take the form of daily, weekly, or monthly time reports or other pay-roll records.

(2) Wage-rate records should be prepared, dated, and any changes therein noted, with the date thereof.

(3) The wage rate used in calculating the productive labor costs should not be higher than the market prices for the respective classes of work.

(4) All labor costs should be represented by wages, computed as above, and actually paid to the respective employees. These wages must be in agreement with the pay-roll records.

Method for Ascertaining Overhead Cost.

The following information should be compiled to support the overhead costs:

(1) Final summary showing the totals of overhead by productive departments, these totals being obtained from paragraph 2.

(2) Summaries showing the overhead in each productive department, giving the amount distributed and applicable to Government work. These summaries will include all overhead charged to the productive departments.

(3) Summaries of the detailed items composing the overhead directly charged to each productive department where Government work is done.

(4) Summaries showing the detailed items composing the overhead directly charged to each nonproductive department and the distribution of these items.

(5) Summaries showing the detailed items composing the general operating expenses and the distribution of these items.

(6) The methods or bases used in the distribution of the overhead should be specified. This would include the following: (*a*) The method or basis used for applying the productive department overhead to the job, order, article, or contract; (*b*) the method or basis used for distributing the nonproductive department overhead; (*c*) the method or basis used for distributing the general operating expenses.

(7) When mentioning the methods which are used, the various percentages or rates of overhead used should be specified. Schedules should be prepared showing how the various overhead percentages and rates were ascertained.

Principles of Distribution of Overhead Expenses.

(1) If a cost system is in use and the method of distributing the overhead to departments and product is one that is based on well-defined principles, the method of distribution may be accepted.

(2) The period of time covered by the distribution of the overhead should be in accordance with the cost period, which should not be more than five weeks. If a cost system is not in use, the distribution of costs should be made at least monthly, according to the calendar month if possible.

(3) Standard methods of distribution of overhead are first, direct labor cost; second, direct labor hours; third, machine hours.

First. If the wages in an individual operating department are fairly uniform, it will not make any particular difference whether the overhead is distributed on labor costs or labor hours. If, however, there is high and low priced labor in an operating department, it is more accurate to use direct labor hours, especially if both Government and commercial work is being handled in that department

Second. The method of distribution of overhead by the direct labor hours is, in the majority of cases, the most accurate method.

Third. As between direct labor distribution and machine hour distribution, the guiding principle is that wherever the work depends upon the skill of the workman, and the machine or implements that he uses are merely his tools, the direct labor hour or cost is the logical method to use. If, however, automatic machines are used, or in cases where one man may run two or more machines, the machine rate is the logical one to use.

(4) Where cost systems are not in use, it is important to advise the contractors of the most equitable basis for the distribution of the overhead work before work upon Government contracts is started.

APPENDIXES.

APPENDIX A.—DEPRECIATION AS DEFINED IN TREASURY DECISION NO. 2384.

Regulation No. 39, issued October 24, 1916, as Treasury Decision No. 2384 (internal revenue), interpreting depreciation as stated in the munitions tax law of September 8, 1916, contains the following:

ART. 20. The deduction authorized on account of depreciation relates to the loss due to use, wear, and tear of physical property, owned and used by the manufacturer, but which is not specially designed or installed for the purpose of manufacturing munitions or parts thereof, and which, without material alteration and change, may be used in connection with any other business in which the person is or may be hereafter engaged.

The annual deduction on this account will be a reasonable allowance determined upon the basis of the cost and probable number of years constituting the life of the property.

If the same building and machinery or other equipment are used coincidentally for purposes other than the manufacture of munitions or parts thereof, then the amount deductible from the gross income returned for the purpose of this title on account of depreciation will be apportioned in accordance with the rule hereinbefore set out for apportioning running expenses, and the deduction from the gross income contemplated by this title will be made accordingly.

ART. 21. Section 302 of this title authorizes a deduction to meet the conditions peculiar to each concern, and has for its purpose the amortization of the values of buildings and machinery constituting special plants, which will, except for salvage, have no substantial value to the manufacturer when the contracts executed or to be executed for the manufacture of munitions or parts thereof have been fully performed.

The deduction authorized on this account relates to property (buildings, machinery, and equipment) specially constructed or installed for use in the manufacture of munitions or parts thereof, and which, when no longer useful for this purpose, can not, without material alteration or change, if at all, be used for any other purpose, the life of which property is substantially coincident with the life of the contracts.

The annual allowance to be deducted on this account will be determined by estimating the probable number of years the property will be used in the manufacture of munitions or parts, and by dividing the cost of such property, less estimated salvage, by such probable number of years. The quotient thus obtained will measure the amount to be deducted each year on account of amortization, until the cost of the property has been extinguished. Or the cost of the property may be amortized on the basis of the quantity of munitions or parts thereof manufactured under contracts in connection with the fulfillment of which the buildings and machinery or equipment were specially constructed or installed.

Neither the depreciation nor the amortization deduction allowable in the return made for the purpose of this title will relate to property used in connection with any other business carried on by the manufacturer. Amortization applies only and particularly to those special plants and equipment whose life and value, except salvage, will terminate with the end of the business for which they were erected and equipped. It is to be differentiated from depreciation in that depreciation relates to property whose life and value is not dependent upon or materially affected by its use in the manufacture of munitions or parts thereof.

APPENDIX B.—STANDARD FORM FOR COST AND PROFIT CONTRACT.[a]

UNITED STATES OF AMERICA

..... DEPARTMENT

These Articles of Agreement entered into this..... ..... between .....
.....
of the first part (hereinafter called the contractor), and the UNITED STATES OF AMERICA, by.....
(here insert name of contracting officer).....
Department (hereinafter called the contracting officer), acting by authority of the .....
(here insert title of head of department), and under the direction of the Secretary of ....., of the second part;

WITNESS:

WHEREAS war exists between the United States and Germany constituting a national emergency,

NOW, THEREFORE, under the provisions of Section 120 of an Act of Congress relating to National Defense, approved June 3, 1916, and pursuant to all other laws of the United States and executive orders of the President of the United States or heads of its departments under which the requirements of advertisement for proposals are dispensed with, and contracts in the form hereof duly authorized and IN CONSIDERATION of the mutual agreements herein contained, the said parties have agreed and by these presents do agree to and with each other as follows, viz:

ARTICLE I. The contractor agrees to make for the United States the following articles (insert name and number of articles contracted for), Articles contracted for.
hereinafter called "the articles," each of the articles being referred to as "unit," in accordance with the draw-

[a] This form has not been submitted to the Comptroller of the Treasury for approval and is intended solely as a guide to contracting officers and others in preparing contracts. Contracts, after being drawn, may be submitted to the comptroller for approval, if the contracting agents think such action necessary.

ings and specifications hereto attached marked Schedule I, and made a part hereof, together with such changes as may be made therein as hereinafter provided, and the United States agrees to pay therefor, all upon the terms and conditions in this contract set forth.

General provisions.

ARTICLE II. Time being of the essence, the contractor agrees to provide, with the utmost dispatch, at the best prices obtainable, (1) such administrative, purchasing, manufacturing and accounting organization, (2) such plant, machinery, tools and other facilities, including such facilities in addition to the contractor's normal facilities (hereinafter called increased facilities), [*Note:* This provision is only applicable in instances where the contractor is doing work requiring a special outlay for which the United States will pay as part of the bargain] and (3) such labor, material, supplies and the like, as may be necessary to enable the articles to be made and all the requirements of this contract, including the requirements in respect of the storage and delivery of the articles contemplated herein to be complied with in manner satisfactory to the contracting officer. The contractor in dealing with parties other than the United States shall make all subcontracts, purchases, payments and other arrangements for performing this contract in his own name and for his account, and shall not bind, or purport to bind the United States, except as the contracting officer shall otherwise in writing direct. The contractor shall, unless otherwise directed by the contracting officer, insert in every contract made for increased facilities, material, supplies and the like, relating to the performance of this contract, a provision that such contract may be assigned by the contractor, and that such contract relates to a main contract between the contractor and the United States. All property paid for by the United States shall upon such payment become the property of the United States, shall be kept separate and apart from property belonging to the contractor, and shall be so marked as the contracting officer may from time to time direct. The contractor hereby waives and releases all lien or right of lien now existing or which may hereafter arise for work or labor performed or materials furnished or for any other reason or cause under this contract, under any lien laws, State or Federal, upon the articles or any component parts, material, supplies, or

other property coming into its possession which it is contemplated shall presently or ultimately become the property of the United States. The United States may, at its option, from time to time furnish the contractor with any increased facilities, material, supplies and the like or other property, relating to the performance of this contract, provided, however, that the contractor's undertakings for the same, made in good faith, are not thereby interfered with.

Deliveries.

ARTICLE III. The contractor agrees to deliver the articles according to the following schedule:

(Insert schedules of deliveries)

Time being of the essence, the contractor will, if possible and if requested so to do by the contracting officer, anticipate the foregoing schedule, and agrees to give the performance of this contract precedence over all work for parties other than the United States. The contractor shall not be responsible for delays directly caused by acts of war, riot, incendiarism and the like, or by strike, fire, storm and the like, or by any act of the United States or other cause beyond the control or without the fault of the contractor, without, however, relieving the contractor from using his best efforts to remove such cause and continuing performance with the utmost dispatch whenever such cause is removed. The contractor from time to time will, and at any time upon the request of the contracting officer shall, furnish to the contracting officer statements and reports upon the progress of the work, and any and all factors relating to the delivery of the articles.

Deliveries of the articles, suitably packed, boxed and marked as directed by the contracting officer, shall be made to the contracting officer at the plant of the contractor at ----------, but the contractor, at the cost and risk of the United States, shall store the articles for so long a period, not exceeding one year, as the contracting officer shall request, providing such space and buildings as may be desirable for adequate and safe storage, and in determining such cost, the rental for the use of land and buildings of the contractor shall be determined as hereinafter in Article X hereof provided; and also at the cost of the United States the contractor shall ship the articles to any point in the United States, making all arrangements for transportation, all according to the instructions of the contracting officer.

Payments.

ARTICLE IV. The United States will make the following payments to the contractor:

(1) The sum of $_____ (Insert profit agreed upon) for each unit delivered, as a fixed profit, of which $_____ shall be paid upon the proper certificate of the contracting officer showing delivery and acceptance of units during the performance of the contract, [*Note:* Where units are in large quantity, fixed profit should be paid each month for deliveries of units during the preceding month] and the remainder upon the completion of the contract. Such fixed profit is subject to addition or deduction as hereinafter provided.

(2) The United States shall add to fixed profit, or deduct from fixed profit, as the case may be, under the following adjustments:

(*a*) The estimated cost of each unit upon which the fixed profit is based is $_____, made up of the following itemization:

Profit adjustment.

(Insert and separately number each item of estimated cost such as material, component parts, packing, etc., overhead expenses, depreciation, etc.)

Immediately upon the completion of the contract, or its termination by the United States for reasons other than default of the contractor, the entire actual cost of conversion as estimated per unit in the above items numbered _____ (insert numbers relating to conversion cost) exclusive of all costs which may be fixed and agreed upon in the foregoing and all material, supplies and the like paid for by the United States, shall be determined by the contracting officer in accordance with the provisions of this contract. If the actual cost of conversion shall be found to exceed the estimate, the United States shall deduct from the payments to be made to the contractor on account of fixed profit _____ % of such difference between actual and estimated cost, provided always that the fixed profit after such adjustment shall not be less than $_____ per unit delivered. If, however, the actual cost of conversion shall be found to be less than the estimate, the United States shall immediately pay the contractor, in addition to the fixed profit previously paid, all fixed profit withheld and _____ % of such difference between the actual and estimated cost, provided always that the fixed profit after such addition shall not be more than $_____ per unit delivered. The additional cost of conversion necessitated by the

failure of component parts furnished by the United States shall not be included in the determination of actual cost for the purposes of this subdivision (*a*). [*Note:* This last sentence refers to instances where the United States proposes to furnish component parts of the article.]

[*Note:* In view of the fact that in a cost contract the United States pays for all costs irrespective of variations in the price of material and the like, the only variations for which the contractor shall receive credit or be charged under this paragraph must be those arising from the conversion of material and component parts into the finished article. This subdivision (*a*) shall be omitted if the provision for the contractor to share in a saving on estimated cost, and bear part of the excess over estimated cost is no part of the bargain.]

Liquidated damages.

(*b*) In the event that the contractor shall fail to deliver the articles according to the schedule of deliveries provided for herein as complete articles, sets, or lots, as the case may be, the contractor shall be in default under this contract, which default shall continue until such time as such articles, sets, or lots shall be delivered. When one or more parts of an article or articles of a set or lot are not delivered by the proper date, the complete article or the entire set or lot shall be classed as undelivered for the purpose of computing liquidated damages. For each day during which the contractor shall be in default on account of such deliveries, the United States shall deduct from the payments to be made to the contractor on account of fixed profit adjusted as in subdivision (*a*) of this paragraph (2) _____ of _____ per cent of the amount named as fixed profit in paragraph (1) of this Article IV for each article or set or lots of articles, with respect to which the contractor shall be in default. The United States shall also deduct from the payments to be made to the contractor on account of fixed profit adjusted as aforesaid such additional cost of inspection and superintendence, if any, as may be caused by any default of the contractor in the delivery of articles or the completion of component parts. Provided, however, that in no event shall such deductions, or either of them, cause the fixed profit adjusted as hereinbefore provided and as finally paid to the contractor to be less than the sum of $_____ per unit. It is understood and agreed that if the United States shall elect to terminate this contract as provided in Article IX hereof, the aforesaid deductions shall be made

only for each day prior to such termination, and that unless the United States shall so terminate this contract the contractor shall proceed to complete the delivery of articles with the utmost dispatch, and that such deduction of _____ of _____ per cent of fixed profit for each day of default is not imposed as a penalty, but as a liquidation of actual damages which according to a careful and reasonable estimate the United States will sustain if deprived of the use of the articles, sets, or lots during the period for which deduction is made. Provided, however, that the contracting officer may extend the time for delivery of any articles or completion of any component parts for a period equal to any delay or delays caused in his opinion by any act of the United States, or by acts of war, riot, incendiarism and the like, or by strike, fire, storm and the like, or other cause beyond the control and without the fault of the contractor occurring during such time as the contractor may not be in default or before the expiration of any previous extension of the time for delivery of any articles, and no deduction from fixed profit shall be made for delay directly arising from any such cause.

[*Note:* Subdivision (*b*) of paragraph (2) should be omitted where liquidated damages are no part of the bargain.]

(3) The cost of increased facilities as allowed and determined in accordance with Article V hereof shall be paid from time to time upon the proper certificate of the contracting officer either to, or upon the order of the contractor, against the delivery of increased facilities or any part thereof to the contractor, or in the event that such increased facilities are furnished by the contractor, upon delivery to the contracting officer by the contractor.

[*Note:* Payments for the purchase or rental of land and the erection of buildings for use by the contractor should be the subject of special clauses.]

(4) The cost of the articles during each month as allowed and determined in accordance with Article V hereof shall be paid in the following month (as early in the month as possible) upon the proper certificate of the contracting officer.

In order that payments may be made promptly, the United States may attach a paymaster in the main office or plant of the contractor, and shall so do if payments are at any time unreasonably delayed. The United States may, if at any time authority therefor exist, and the contracting officer shall deem such advisable, make other and more

frequent payments, and to the end that sufficient money may be retained by the United States to cover any deductions from fixed profit, liquidated damages, if any, or differences as to cost payments, the contracting officer may withhold such percentage of fixed profit and such part of the payment of final costs as may be sufficient for such purpose. No payments by the United States shall act to prevent the United States from later disputing the validity thereof under this contract.

Allowance of costs.

ARTICLE V. The allowances of the cost of increased facilities and of the articles, for which the United States shall pay and the elements included in the term "costs" as used in this contract are as follows:

(1) Cost of material and supplies definitely ascertainable as entering into or expended in the production of the articles contracted for hereunder.

(2) Cost of all direct labor definitely ascertainable as employed in the production of the articles contracted for hereunder.

(3) A fair proportion of overhead expenses. By the term "overhead expenses" is meant the indirect labor and other manufacturing expenses, and the general and administrative expenses applicable to and necessary in connection with the production of the articles contracted for hereunder. It does not include (among other items) the following: Interest, rent, advertising, collection expenses, credit losses, and customers' discounts, such taxes as income and excess profits taxes imposed by the United States Government. (Interest, rent, and selling expenses will not be allowed as part of overhead cost, but may be the subject of special compensation when so stipulated in the contract.)

[*Note:* Notwithstanding the foregoing, charges may be made "direct" or as "overhead," in accordance with the usual methods of cost keeping adopted by the contractor, provided that charges are not made "direct" in Government work, when similar charges for other work done by the contractor are made as "overhead."]

[*Note:* If the bargain is that the contractor shall not in any event exceed a certain fixed sum for his costs, a provision to such effect should be inserted here, i. e., "Anything in this contract to the contrary, notwithstanding, the contractor agrees that the cost of the articles to be allowed pursuant to this Article V hereof shall not exceed the sum of $ ---------- and agrees to himself pay without

claim of reimbursement from the United States all costs in excess of such sum."]

[*Note:* The allowance of cost will probably vary. This is an accounting problem depending upon the method of keeping costs followed by the particular manufacturer. A separate schedule of costs allowed should be attached. *In every instance possible overhead and depreciation should be put down at a fixed amount, subject to independent investigation during the performance of the contract, and revision.* In determining depreciation it is desirable (1) to agree on a proper rate, taking into consideration the use of the plant for purposes other than war orders, (2) to have the contractor make a representation as to his actual cash investment in plant, machinery, tools, fixtures, and the like, subject to investigation as to correctness, and to apply the rate agreed upon to the sum fixed or corrected, as the case may be.]

In addition thereto further allowances of cost from time to time may be made by the contracting officer.

The United States shall not be obligated to reimburse the contractor for any expenditures relating to the performance of this contract unless the approval of the contracting officer shall be obtained before such expenditures are made or contracted for.

The determination of the actual costs as herein allowed shall be made by the contracting officer, who shall from time to time instruct the contractor as to (1) the methods to be followed in determining actual costs [*Note:* This provision is essential where the contractor's system of keeping costs is fundamentally at variance with the standards of the cost accounting section, ---------- Department], (2) the submission of statements thereof, bills therefor, and all other supporting papers, (3) the submission of engineers' and accountants' certificates, and (4) such additions to the allowance of cost and such regulations and instructions with regard to its determination as from time to time shall be adopted by the ---------- ---------, or as may be required, in order to enable the contracting officer to issue his proper certificate for payment thereof.

The decision of the contracting officer on all questions of the allowance and determination of costs and the payment thereof shall be final, except that either upon the completion of the contract by the contractor, or its

termination by the United States, or whenever claims of cost amounting in the aggregate to $..... (this figure should bear a substantial relation to the total estimated cost), shall have been disallowed or determined adversely to the contractor by the contracting officer, the contractor may appeal to the ..... by filing one statement of claim which shall embrace all claims of cost previously disallowed or adversely determined, provided that all such claims shall be certified by an accountant designated by the contracting officer as being in their entirety the subject of expenditure of, or cost to, the contractor. The decision of the ..... shall be final upon such appeal.

Inspection.

ARTICLE VI. All increased facilities, material, supplies and the like furnished under this contract, the plant, machinery, tools and other equipment, all workmanship, the articles, and all bills, statements, receipts, vouchers, books, correspondence, memoranda and other records of all sorts of the contractor in any way related to the subject of this contract, shall be at all times subject to inspection by the proper officers or agents of the ..... Department, or persons designated by the ..... (here insert title of head of department) or the contracting officer, and the contractor shall furnish reasonable facilities and assistance for all such inspection. The contractor shall keep all such records in shape for ready reference and shall preserve the same for a period of at least six years after the completion of the contract. Whatever material is used in making the articles, the articles and all other property paid or to be paid for by the United States, which does not in all respects fulfill the requirements of the contract shall be rejected, and the decision of the contracting officer as to the quantity and quality thereof shall be final.

Changes in specifications.

ARTICLE VII. It is agreed that the contracting officer may, by written notice to the contractor, make changes in the drawings and specifications forming part of this contract, (and if such changes involve substantially additional work for the contractor's manufacturing organization, or labor and material, a fair addition shall be made to fixed profit so that in any event the fixed profit shall be an amount not less than ten per cent. of the cost provided for in Article V hereof; but if such changes involve

substantially less of such work, or labor and material, a fair deduction in no event to reduce the fixed profit to an amount less than ten per cent. of the cost provided for in Article V hereof, may be made therefrom, all as shall be determined by the contracting officer).

[*Note:* The last clause is wholly inapplicable to contracts for usual and standard articles not subject to change.]

Additional articles.

ARTICLE VIII. The United States shall have the right to order at any time before the completion of this contract and the contractor shall thereupon supply additional articles under the terms of this contract, not to exceed per cent., of the quantities herein contracted for, upon the same terms as to fixed profit and other payments, or at such reasonable advance upon fixed profit as may be fixed by the contracting officer; the articles to be delivered upon the dates fixed by the contracting officer or as near thereto as the contractor's best efforts will allow. It is further agreed that the United States may accept, with the consent of the contractor, in full satisfaction of this contract, such lesser quantities of the articles herein contracted for as the contracting officer may designate.

Termination.

ARTICLE IX. In the event of failure or probable failure of the contractor to comply with the terms of this contract or any of them, or in the event that in the opinion of the ..... (here insert title of the head of the department) the public interests so require, this contract may be terminated by notice in writing to the contractor, without prejudice to any claim the United States may have against the contractor. Thereupon the contracting officer, with the approval of the ..... (here insert title of the head of the department) may proceed to complete the making and delivery of the articles, or any part thereof, as well as any additional articles, and may employ such agents and employees, including the contractor, his agents and employees, as the contracting officer may deem necessary or desirable, and may take possession of the plant and property of the contractor used in the performance of this contract, secure from the contractor an assignment of all contracts and agreements relating to this contract, which the contractor hereby agrees to assign, and may generally do and perform all acts and things necessary or advisable in order to obtain the articles which are the subject of this contract, all of which is

agreed to by the contractor. In the event and to the extent that the United States takes over the plant and property of the contractor for the completion of this contract, or for the manufacture of additional articles, the contractor shall be paid a reasonable rental for the use of the same, as may be mutually agreed upon between the contracting officer and the contractor, or if agreement is impossible, as may be fixed by the ..... as reasonable rental, and the manufacture of the articles by the United States shall always be conducted without cost of any sort to the contractor.

In the event of the termination of this contract as aforesaid, the United States shall pay the contractor all costs of the contractor theretofore incurred and not previously paid, which may be allowed pursuant to Article V hereof.

In addition thereto the United States shall make the following payments under the following conditions:

(1) In the event that the contractor shall not be in default under this contract at the date of such termination, the contractor shall be paid a sum which together with all fixed profits theretofore paid in accordance with paragraph (1) of Article IV shall be equivalent to ten per cent (10%) of all cost, except the cost of material, supplies and the like raw and not in process of conversion, which the United States shall have previously paid, and shall then be obligated to pay. Such ten per cent (10%) of cost payment is subject to such addition or deduction depending on the difference between estimated and actual cost of articles which have been delivered and accepted as may be determined in accordance with subdivision (*a*) of paragraph (2) of Article IV hereof.

[*Note:* If subdivision (*a*), paragraph (2), of Article IV is no part of the bargain, omit the foregoing sentence.]

(2) In the event that the contractor shall be in default under this contract at the date of such termination, but in the opinion of the contracting officer expressed in writing shall have in good faith used his best efforts in the performance of the contract, then the ten per cent (10%) of cost less fixed profits as determined in the foregoing paragraph (1) shall be decreased to such extent, but not below ..... per cent (%) to the end that the resulting per cent. of cost which shall be paid the contractor may, in the opinion of the contracting officer, fairly measure the service of the contractor,

and such additional payment only shall be made to the contractor.

[*Note:* This clause should not be used in instances where the contractor's previous experience in manufacturing gives fair assurance that he is able to comply with the terms of the contract. Accordingly this clause should not generally be permitted.]

The foregoing provisions with respect to payments to be made by the United States upon the termination of this contract shall also apply in the event that the continued performance by the contractor of this contract is finally prevented by acts of war, riots, incendiarism or other such causes beyond the control and without the fault of the contractor which may be directly traceable to the United States being in a state of war.

In the event of the termination of this contract as aforesaid any and all obligation of the United States to make any payments to the contractor hereunder, other than those specified in this Article IX, shall at once cease and determine.

Disposition of unused materials, etc., upon termination of contract.

ARTICLE X. Upon the completion of this contract, whether by the contractor or by the United States, or the termination of the contract without further performance thereof in accordance with Article IX hereof, or from time to time during the performance of this contract, the contractor agrees to make such disposition, at the expense and for the account of the United States, of the increased facilities, unused material, supplies and the like, scrap, waste or defective material, rejected articles and generally all such property which shall have been paid for by the United States, as the contracting officer shall in writing direct; such direction to be given during the performance of this contract or within 60 days after its completion. Any of the foregoing property may be sold to the contractor by the contracting officer upon terms mutually agreeable. If the contractor is thereby required to store such property, the cost of storage and all costs incident thereto shall be from time to time paid to the contractor by the United States. If land and buildings of the contractor are used for storage, the United States shall pay to the contractor a reasonable rental therefor, as may be mutually agreed upon, or if agreement is impossible, as may be fixed by the ..... (here insert title of head of department) but in no event to

exceed ten per cent per annum of the cost of such land and buildings to the contractor, or a proportion of such cost according to the proportion of land and buildings used. It is agreed that the foregoing measure of payment shall apply to any storage of the articles in accordance with Article III hereof.

Materials, etc., to be kept unencumbered.

ARTICLE XI. The contractor agrees not to create or suffer to be created, any mortgage, lien, pledge or other encumbrance upon any of the increased facilities, materials, supplies or other property for which the United States shall pay, and which is in the possession of the contractor, and further agrees not to permit or suffer any attachments, mechanics' liens or other liens or encumbrances to attach to such property or the articles, and in the event that any such attachment, lien or encumbrance is created, agrees to pay and discharge the same, to the end that all property which shall have been paid for by the United States shall be and remain free and unencumbered property of the United States, provided that nothing in this Article contained shall require the contractor to make any such payments so long as he shall in good faith contest the validity of the claim or claims therefor and so long as the delivery of the articles is not interfered with, and provided further that the contractor shall bond the claim asserted. The contractor shall give due notice that all property which shall have been paid for by the United States belongs to the United States.

Contract not assignable.

ARTICLE XII. This contract shall not, nor shall any right to receive payment or any other interest therein, be transferred or assigned by the contractor to any persons, firms or corporations.

Labor disputes.

ARTICLE XIII. In the event that labor disputes shall arise directly affecting the performance of this contract and causing or likely to cause delay in making the deliveries upon the date or dates specified, the contractor shall address a written statement thereof to the .... for transmission to the Secretary of ..... with the request that such dispute be settled, providing such information and access to information within the control of the contractor as the Secretary of ..... shall require, and it is stipulated and agreed that the Secretary of ..... may thereupon settle or cause to be settled such dispute.

Eight-hour day.

ARTICLE XIV. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor, or any sub-contractor contracting for any part of said work contemplated, shall be required or be permitted to work more than eight (8) hours in any one calendar day upon such work, such prohibition being in accordance with the Act approved June 19, 1912, limiting the hours of daily service of mechanics and laborers on work under contracts to which the United States is a party. For each violation of the requirements of this Article a penalty of Five Dollars ($5.00) shall be imposed upon the contractor for each laborer or mechanic for every calendar day in which said employee is required or permitted to labor more than eight (8) hours upon said work, and all penalties thus imposed shall be withheld for the use and benefit of the United States; provided, that the above provision shall not be enforced nor shall any penalty be exacted in case such violation shall occur while there is in effect any executive order suspending the provisions of said Act approved June 19, 1912, or waiving the provisions and stipulations thereof with respect to either this contract or any class of contracts in which this contract shall be included, or when the violation was due to any extraordinary event or conditions of manufacture, or to any emergency caused by fire, famine, or flood, by danger to life or property, or by other extraordinary events or conditions on account of which, by subsequent executive order, such past violation shall have been excused.

It is agreed that the contractor, in doing any part of the work contemplated by this contract, and any subcontractor contracting for any part of said work, shall comply with the provisions of the Naval Appropriation Act approved March 4, 1917, and the executive order of the President of the United States dated March 24, 1917, in respect to the wages of persons employed upon contracts with the United States, so long as said Act approved March 4, 1917, or said executive order dated March 24, 1917, shall be in force and effect.

Officials not to benefit.

ARTICLE XV. No member of, or delegate to, Congress or Resident Commissioner, nor any person belonging to or employed in the military service of the United States, is, or shall be admitted to any share or part of this contract, or to any benefit that may arise there-

from, but this Article shall not apply to this contract so far as it may be within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats., 1109).

No prison labor.

ARTICLE XVI. No person or persons shall be employed in the performance of this contract who are undergoing sentences of imprisonment at hard labor which have been imposed by the courts of the several States, Territories or municipalities having criminal jurisdiction.

Doubts or disputes to be referred to Chief of Ordnance.

ARTICLE XVII. Except as this contract shall otherwise provide, any doubts or disputes which may arise as to the meaning of anything in this contract, shall be referred to the ....., for determination. If, however, the contractor shall feel aggrieved at any decision of the ..... upon such reference, he shall have the right (save only as to the allowance and determination of costs as provided for in Article V hereof) to submit the same to the Secretary of ....., whose decision shall be final.

Notice.

ARTICLE XVIII. Notice under this contract shall be deemed to have been sufficiently given to and received by the contractor when mailed in a sealed postpaid wrapper addressed to .....

Execution.

ARTICLE XIX. This contract may be executed in any number of counterparts, all of which together shall constitute one original contract. Wherever the term "contracting officer" is used in this contract the same shall be construed to mean the contracting officer executing this agreement, his successor or successors, his duly authorized agent or agents, or anyone designated by the ....., from time to time, to act as contracting officer hereunder.

IN WITNESS WHEREOF, the party of the first part has caused this contract to be executed by its proper officers thereunto duly authorized, and the United States of America has caused this contract to be executed by the undersigned contracting officer thereunto duly authorized.

Witnesses: Signatures:

---------- ----------

---------- ----------
Contractor.

---------- ----------

---------- Dept., ----------
Contracting Officer.

(Executed in quintuplicate.)

Annexed hereto:
Schedule I—Drawings and specifications.

APPENDIX C.—STANDARD FORM FOR PURCHASE CONTRACT.[a]

UNITED STATES OF AMERICA.

..... DEPARTMENT.

THESE ARTICLES OF AGREEMENT entered into this ..... between .... of the first part (hereinafter called the contractor), and THE UNITED STATES OF AMERICA, by ...., ... Department, ... (hereinafter called the contracting officer), acting by authority of the ....., [here insert title of head of department], and under the direction of the Secretary of ...., of the second part;

WITNESS:

WHEREAS war exists between the United States and Germany constituting a national emergency,

NOW, THEREFORE, under the provisions of Section 120 of an Act of Congress relating to National Defense, approved June 3, 1916, and pursuant to all other laws of the United States and executive orders of the President of the United States or heads of its departments under which the requirements of advertisements for proposals are dispensed with, and contracts in the form hereof duly authorized, and in consideration of the mutual agreements herein contained, the said parties have agreed and by these presents do agree to and with each other as follows, viz:

ARTICLE I. The contractor agrees to make for and sell to the United States the following articles (insert name and number of articles contracted for): .... hereinafter called "the articles," each of the articles being referred to as a "unit," in accordance with the

Articles contracted for.

[a] This form has not been submitted to the Comptroller of the Treasury for approval, and is intended solely as a guide to contracting officers and others in preparing contracts. Contracts, after being drawn, may be submitted to the comptroller for approval, if the contracting agents think such action necessary.

drawings and specifications hereto attached marked Schedule I, and made a part hereof, together with such changes as may be made therein as hereinafter provided, and the United States agrees to purchase the articles and to pay therefor, all upon the terms and conditions in this contract set forth.

Deliveries.

ARTICLE II. The contractor agrees to deliver the articles according to the schedule of deliveries set forth at the end of this Article II.

Time being of the essence, the contractor will, if requested so to do by the contracting officer, use his best efforts to anticipate said schedule, and agrees to give the performance of this contract precedence over all work for parties other than the United States. The contractor from time to time will, and upon request of the contracting officer at any time shall, furnish to the contracting officer statements and reports upon the progress of the work, and any and all factors relating to the delivery of the articles.

Deliveries of the articles, suitably packed, boxed, and marked according to the instructions of the contracting officer, shall be made to the contracting officer at the plant of the contractor at ----------, but the contractor, at the cost and risk of the United States, shall store the articles for so long a period, not exceeding one year, in all respects as the contracting officer shall direct, providing such space and buildings as may be desirable for adequate and safe storage. The United States shall pay to the contractor such fair and just rental for land and buildings of the contractor used for storage as may be mutually agreed upon, or, if agreement is impossible, as may be fixed by the ----------, but such rental shall in no event exceed 10 per cent per annum of the cost of such land and buildings to the contractor, or a proportion of such cost according to the proportion of the land and buildings used. Also at the cost of the United States the contractor shall ship the articles to any point in the United States, making all arrangements for transportation, all according to the instructions of the contracting officer. [*Note*: Any of the foregoing provisions may be omitted where inapplicable.]

The contractor shall not be responsible for any delays which shall be determined by the contracting officer to have been caused by direct act of the United States

without fault of the contractor, nor for any other cause beyond the control of and without the fault of the contractor, such as explosions, riots, labor strikes, acts of war and the like, but the contractor shall use his best efforts to remove any such cause for delay which may occur, and whenever the effect of such cause shall be removed, the contractor shall proceed with the performance of this contract with the utmost dispatch.

On completion by the contractor of any lot of _____ (insert a substantial number) of component parts or of the articles ready for inspection, the contractor shall notify the contracting officer that the lot is ready for inspection at the plant or plants of the contractor, upon receipt of which notice prompt inspection shall be made by the United States. [*Note:* This paragraph should be omitted unless the articles are to be delivered in large quantities.]

SCHEDULE OF DELIVERIES.

Contract price.

ARTICLE III. It is agreed that the sum of _____ dollars ($_____) shall be the basic purchase price of each unit delivered and accepted, and that the sum of _____ dollars ($_____) shall be the total basic purchase price for the articles contracted for, subject, however, to the following adjustments:

Fluctuations in price of material.

(1) The aforesaid basic purchase price is based on the following estimate of the cost of materials and component parts:

[Insert schedule of estimated cost of the total amount of each kind of material and component parts to be purchased by the contractor and used to make the articles such as so much steel, copper, spelter, and the like, at the estimated cost to the contractor per pound or per unit of purchase. This schedule must be inserted if either the following portion of paragraph (1) or paragraph (2) is made a part of the contract; otherwise it may be omitted.]

Immediately upon the completion of this contract, or its termination by the United States, the entire actual cost of materials and component parts purchased by the

contractor and used in the performance of this contract (other than materials and component parts furnished by the United States, and such unused materials and component parts as the contractor may have purchased but has on hand upon such completion or termination) shall be determined by the contracting officer. If such entire actual cost shall exceed the above estimate thereof, the basic total purchase price for the articles shall be increased by an amount equal to such excess, and the basic purchase price of each unit shall be increased proportionately. If, however, such entire actual cost shall be less than the above estimate thereof, the basic total purchase price shall be reduced by an amount equal to such difference between actual and estimated cost, and the basic purchase price of each unit shall be decreased proportionately. The contractor shall not purchase or contract to purchase any materials or component parts without first obtaining the approval of the contracting officer, and the cost of any materials or component parts which the contractor shall purchase or contract to purchase without such approval shall not be included in the aforesaid determination of the entire actual cost of materials and component parts purchased by the contractor and used in the performance of this contract.

[*Note:* The above provision may be omitted if so desired.]

United States may furnish material.

(2) The United States may, at the option of the contracting officer, from time to time furnish the contractor with any materials or component parts to be used in the performance of this contract: *Provided, however,* That the contractor's undertakings for the same made with the approval of the contracting officer, are not thereby interfered with, and a fair deduction from the basic purchase price shall be made therefor; such deduction, whenever practicable, shall equal the contractor's estimate of the cost of such materials or component parts.

[*Note:* It is recommended that the above paragraph be used whenever possible, in order that the United States may take advantage of any saving it is able to make in the purchase of materials and component parts.]

(3) In the event that the contractor shall fail to deliver the articles according to the schedule of deliveries provided herein for deliveries of complete articles, sets, or lots, as the case may be, the contractor shall be in de-

fault under this contract, which default shall continue until such time as such articles, sets, or lots, shall be delivered. When one or more parts of an article, or articles of a set or lot, are not delivered by the proper date, the complete article, or the entire set or lot, as the case may be, shall be classed and considered as undelivered for the purpose of computing liquidated damages. For each day during which the contractor shall be in default on account of such deliveries, the United States shall deduct from any payment to be made to the contractor thereafter _____ of __ per cent of the basic purchase price, before making any adjustment, of each article, or set or lot of articles, with respect to which the contractor shall be in default, and the United States shall also deduct from any payment to be made to the contractor thereafter such additional cost of inspection and superintendence, if any, as may be caused by any default by the contractor: *Provided, however,* That in no event shall such deductions, or either of them, amount in the aggregate to more than the sum of $_____ per unit. [*Note:* This limit to the amount which may be deducted on account of liquidated damages should be determined with a view to a minimum purchase price which the contractor should receive even in case of delay in deliveries.] It is understood and agreed that if upon default of the contractor as aforesaid the United States shall elect to terminate this contract as provided in Article VIII hereof, the aforesaid deductions shall be made only for each day prior to such termination, and that unless the United States shall so terminate this contract the contractor shall proceed to complete the delivery of articles with the utmost dispatch and that such deduction of _____ of __ per cent of the basic purchase price, before making any adjustment, of each article, or set or lot of articles, with respect to which the contractor shall be in default, for each day of default in delivery, is not imposed as a penalty, but as a liquidation of actual damages which according to a careful and reasonable estimate the United States will sustain if deprived of the use of such article, or set or lot of articles, during the period for which deduction is made: *Provided, however,* That the contracting officer may extend the time for delivery of any articles for a period equal to any delay or delays caused in his opinion by any act of the United States or by any act of war, riot, incendiarism, and the like, or by

Liquidated damages.

strike, fire, storm, and the like, or by other cause beyond the control and without the fault of the contractor occurring during such time as the contractor may not be in default or before the expiration of any previous extension of the time for delivery of any articles, and no deduction shall be made for delay arising out of any such cause.

[*Note:* Paragraph (3) should be omitted if liquidated damages are no part of the bargain.]

Changes in specifications.

(4) It is agreed that the contracting officer may, by written notice to the contractor, make changes in the drawings and specifications forming part of this contract, and if such changes involve substantially additional work for the contractor's manufacturing organization, or labor and material, a fair addition shall be made to the basic purchase price; but if such changes involve substantially less of such work, or labor and material, a fair deduction shall be made therefrom, all as shall be determined by the contracting officer.

Settlement of labor disputes.

(5) In the event that labor disputes shall arise directly affecting the performance of this contract and causing or likely to cause delay in making the deliveries upon the date or dates specified, the contractor shall address a written statement thereof to the _____ for transmission to the Secretary of ____ with the request that such dispute be settled, providing such information and access to information within the control of the contractor as the Secretary of ____ shall require, and it is stipulated and agreed that the Secretary of ____ may thereupon settle or cause to be settled such dispute, and that the contractor shall accept and comply with all the terms of such settlement. If the contractor is thereby required to pay labor costs higher than those prevailing in the performance of this contract prior to such settlement, a fair addition to the basic purchase price of the articles shall be made therefor; but if such settlement reduces the labor costs of the contractor, a fair deduction shall be made from the basic purchase price, all as may be determined by the contracting officer. No claim for addition or deduction on account of such settlement shall be allowed unless the same has been ordered in writing and actually put into effect.

Payments.

ARTICLE IV. The United States will pay the purchase price, subject to adjustment as aforesaid, to the contractor as follows:

(1) A sum equal to __ per cent of the actual cost to the contractor of all materials purchased by the contractor for use in the performance of this contract and delivered in any month shall be paid to the contractor as early in the following month as possible, upon the proper certificate or certificates of the contracting officer.

[*Note:* If certain component parts are to be manufactured by the contractor, a paragraph may be inserted here providing for payment upon delivery of each such component part of 80 per cent of the estimated total cost of conversion of the same, but exclusive of the cost of raw material. Such estimated total cost of manufacture should be set forth in the contract. Since no variation of the total purchase price is involved here and the question is only what proportion thereof shall be paid in advance in order to assist the contractor in financing the job and what proportion upon completion of the contract, it is believed that it is sufficiently accurate to base part payments upon such estimated cost of conversion, thus avoiding the necessity of determining the actual cost thereof.]

(2) The sum of _____ dollars for each unit of the articles delivered and accepted during any month shall be paid to the contractor as early in the following month as possible, upon the proper certificate or certificates of the contracting officer.

[*Note:* The sum to be paid pursuant to this paragraph for each unit of the articles should be about 80 per cent of the estimated cost of converting materials and component parts into a complete article.]

(3) Upon the certificate of the contracting officer that all of the articles contracted for have been delivered to the United States and accepted, the United States shall pay to the contractor the amount, if any, by which the purchase price, finally adjusted according to the provisions of Article III hereof, shall exceed the aggregate amount of all payments theretofore made.

The United States shall make all payments promptly, and to this end may attach a paymaster in the main office or plant of the contractor, and shall so do if payments are at any time unreasonably delayed. The United States may, if at any time authority exists therefor and the contracting officer shall deem such advisable, make other and more frequent payments not, however, in excess of the purchase price; and to the end that

sufficient money may be retained by the United States to cover any adjustments of the purchase price, any liquidated damages, or any replacement by the contractor of materials, component parts, or complete articles rejected by the contracting officer as hereinafter provided, the contracting officer may withhold such part of any payment provided for herein as may be sufficient for such purpose. No payments by the United States shall act to prevent the United States from later disputing the validity thereof under this contract.

Title to property.

ARTICLE V. All property paid for or furnished by the United States shall be and remain the property of the United States, shall be suitably marked as such according to the directions of the contracting officer, so that it may be always identified as the property of the United States, and shall be kept in so far as practicable separate and apart from property belonging to the contractor and other property in his possession. The contractor hereby waives and releases all lien or right of lien now existing or which may hereafter arise for work or labor performed or materials furnished or for any other reason or cause under this contract, under any lien laws, State or Federal, upon the articles or any component parts, material, or other property coming into his possession which it is contemplated shall presently or ultimately become the property of the United States.

The United States upon the rejection by the contracting officer of any materials, component parts, or complete articles shall be considered to have rejected title thereto. All such property so rejected the contractor agrees to immediately replace, without cost to the United States, with like property as to kind and amount acceptable to the contracting officer, and the United States agrees that all scrap resulting from manufacture under this contract and all materials, component parts, and complete articles rejected as aforesaid shall become the property of the contractor.

Inspection.

ARTICLE VI. All materials, component parts, supplies and the like furnished under this contract, all workmanship, the articles, and all contracts for materials and component parts purchased by the contractor and all bills, vouchers, and other supporting papers relating to payments for materials and component parts by the United States, shall be at all times subject to inspection

by the proper officers or agents of the _____ Department, or persons designated by the _____ or the contracting officer, and the contractor shall furnish reasonable facilities and assistance for all such inspection. The contractor shall keep all such records in shape for ready reference, and shall preserve the same for a period of at least six years after the completion of this contract. Whatever materials and component parts are used in making the articles, the articles, and all other property paid or to be paid for by the United States, which do not in all respects fulfill the requirements of this contract, shall be rejected, and the decision of the contracting officer as to the quantity and quality thereof shall be final. The contractor shall replace the same as provided for in Article V hereof.

Additional articles.

ARTICLE VII. The United States shall have the right within the period of the performance of this contract to order and the contractor shall thereupon supply any additional articles, not to exceed____per cent of the quantities herein contracted for, upon the same terms as to price as herein provided, or at such reasonable advance of price as may be fixed by the contracting officer, and upon conditions of payment and deliveries similar to those herein contained, and the contractor shall use his best efforts in furnishing the same and shall give the performance of such work precedence over work for all parties other than the United States. It is further agreed that the United States may accept, with the consent of the contractor, in full satisfaction of this contract, such lesser quantities of the articles herein contracted for as the contracting officer may designate.

Termination of contract.

ARTICLE VIII. In the event of failure of the contractor to comply with the terms of this contract or any of them, constituting a default hereunder, or in the event of the termination of the war in which the United States is now engaged, this contract may be terminated by the United States by notice in writing to the contractor, without prejudice to any claim the United States may have against the contractor.

(1) In the event that the contractor shall be in default under this contract at the date of its termination as aforesaid, the contracting officer, with the approval of the _____, may proceed to complete the making and delivery of the articles, or any part thereof,

and may generally do and perform all acts and things necessary or advisable in order to obtain the articles which are the subject of this contract, and the contractor may be charged the amount, if any, by which the cost to the United States resulting from such action by the contracting officer shall exceed the purchase price as set forth in Article III hereof.

(2) In the event that the contractor shall not be in default under this contract at the date of its termination as aforesaid, the contractor shall be entitled to receive the purchase price of articles, which shall be completed within thirty days after notice of termination of this contract, upon their delivery and acceptance, and in addition thereto a sum equal to the total amount of the contractor's actual net expenditures and actual net outstanding obligations made or incurred in good faith with respect to the additional articles of delivery of which is prevented by such termination of this contract. The above provision of this paragraph (2) shall apply in so far as practicable in the event that continued performance by the contractor of this contract is finally prevented by acts of war, riots, incendiarism, or other causes beyond the control and without the fault of the contractor, which may be directly traceable to the United States being in a state of war.

The market value of material supplied to the contractor or paid for by the United States, and remaining in the possession of the contractor upon any termination of this contract, may be charged against the contractor in making any payments after such termination.

Materials, etc., to be kept unencumbered.

ARTICLE IX. The contractor agrees not to create or suffer to be created any mortgage, lien, pledge, attachment or other incumbrance upon any of the component parts, materials, supplies or other property in his possession which it is herein contemplated shall presently or ultimately be paid for directly or indirectly by the United States, and in the event that such mortgage, pledge, lien, attachment or incumbrance is created, the contractor agrees to pay and discharge the same, or if he disputes the validity of the claim out of which such incumbrance arises, immediately to bond the same, to the end that all such property shall be and remain at all times free and clear.

ARTICLE X. The contractor agrees to hold and save the United States, and all persons acting under them, harmless from and against all liability on account of any patent rights, whether granted by the United States or any foreign country, which may affect the articles herein contracted for, or their manufacture, or the performance of this contract in any manner whatsoever.

Contractor to hold United States harmless from liability on account of patent rights.

ARTICLE XI. This contract shall not, nor shall any right to receive payment or any other interest therein, be transferred or assigned by the contractor to any persons, firms or corporations.

Contract not assignable.

The contractor shall, unless otherwise directed by the contracting officer, insert in every contract made for increased facilities, material, supplies and the like, relating to the performance of this contract, a provision that such contract may be assigned by the contractor, and that such contract relates to a main contract between the contractor and the United States.

ARTICLE XII. No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor, or any subcontractor contracting for any part of said work contemplated, shall be required or be permitted to work more than eight (8) hours in any one calendar day upon such work, such prohibition being in accordance with the Act approved June 19, 1912, limiting the hours of daily service of mechanics and laborers on work under contracts to which the United States is a party. For each violation of the above requirement a penalty of five dollars ($5.00) shall be imposed upon the contractor for each laborer or mechanic for every calendar day in which said employee is required or permitted to labor more than eight (8) hours upon said work, and all penalties thus imposed shall be withheld for the use and benefit of the United States; provided, that the above requirement shall not be enforced nor shall any penalty be exacted in case such violation shall occur while there is in effect any executive order suspending the provisions of said Act approved June 19, 1912, or waiving the provisions and stipulations thereof with respect to either this contract or any class of contracts in which this contract shall be included, or when the violation was due to any extraordinary event or conditions of manufacture, or to any emergency caused by fire, famine, or flood, by danger to life or property, or by other extraordinary events or conditions on account of which, by subsequent executive order, such

Eight-hour day.

past violation shall have been excused. It is agreed that the contractor, in doing any part of the work contemplated by this contract, and any subcontractor contracting for any part of said work, shall comply with the provisions of the Naval Appropriation Act approved March 4, 1917, and the executive order of the President of the United States dated March 24, 1917, in respect to the wages of persons employed upon contracts with the United States, in so far as such provisions may be applicable and so long as said Act approved March 4, 1917, or said executive order dated March 24, 1917, shall be in force and effect.

Officials not to benefit.

ARTICLE XIII. No member of, or delegate to, Congress or Resident Commissioner, nor any person belonging to or employed in the military service of the United States is, or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to this contract so far as it may be within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats., 1109).

No prison labor.

ARTICLE XIV. No person or persons shall be employed in the performance of this contract who are undergoing sentences of imprisonment at hard labor which have been imposed by the courts of the several States, Territories, or municipalities having criminal jurisdiction.

Doubts or disputes to be referred.

ARTICLE XV. Except as this contract shall otherwise provide, any doubts or disputes which may arise as to the meaning of anything in this contract, shall be referred to the _____, for determination. If, however, the contractor shall feel aggrieved at any decision of the _____ upon such reference, he shall have the right to submit the same to the Secretary of _____, whose decision shall be final.

Notice.

ARTICLE XVI. Notice under this contract shall be deemed to have been sufficiently given to and received by the contractor when mailed in a sealed, post-paid wrapper addressed to _____.

Execution; definition of "contracting officer."

ARTICLE XVII. This contract may be executed in any number of counterparts, all of which together shall constitute one original contract. Wherever the term "contracting officer" is used in this contract the same shall be construed to mean the contracting officer executing this agreement, his successor or successors, his duly authorized agent or agents, or anyone designated by the

----------, from time to time, to act as contracting officer hereunder.

IN WITNESS WHEREOF, the party of the first part has caused this contract to be executed by its proper officers thereunto duly authorized, and the United States of America has caused this contract to be executed by the undersigned contracting officer thereunto duly authorized.

Witnesses: Signatures:

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Contractor.

---------- ----------
-------- Dept., ----------,
Contracting Officer.

(Executed in quintuplicate.)

Annexed hereto:
Schedule I.—Drawings and specifications.

○

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